

NP



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,134	02/16/2001	Neil Perlman	PERLMAN	5645

7590 03/21/2002

ROBERT M. MASON  
MASON & PETRUZZI  
SUITE 402W  
13601 PRESTON ROAD  
DALLAS, TX 75240

EXAMINER

LINDINGER, MICHAEL L

ART UNIT	PAPER NUMBER
----------	--------------

2841

DATE MAILED: 03/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/788,134

Applicant(s)

PERLMAN ET AL.

Examiner

Michael L. Lindinger

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 52 (FIG. 3), 68 (FIG. 3), and 119 (FIG. 6). Regarding elements 52, 68, and 119, they are referred to within the Specification incorrectly as element 42 (page 9, line 6), 62 (page 10, line 4), and 49 (page 12, line 2), respectively. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1, 4-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the interval" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the group" in line 15. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Objections***

1. Claim 5 is objected to because of the following informalities: the Claim refers to a habit cessation device, which is inconsistent with the habit cessation aide that has been previously claimed. Further examination of this Claim will treat the Claim including a habit cessation aide. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being unpatentable by Decker U.S. Patent No. 5,285,430. Regarding Claim 1, Decker teaches a habit cessation aide comprising a timer 17 to time the interval between starting a habitual act, a display 18, and a strap 15 to strap for securing to a user (Col. 2, lines 37+; Col. 3, lines 1+; Col. 4, lines 6+).

Regarding Claim 2, Decker teaches a habit cessation aide wherein the habit is smoking (Col. 1, lines 1+; Col. 2, lines 1+).

Regarding Claim 3, Decker teaches a habit cessation aide further comprising an alarm 34 (Col. 6, lines 47+; Col. 7, lines 1+).

Regarding Claim 4, Decker teaches a habit cessation aide wherein the alarm is at least from the group of auditory and vibratory (Col. 6, lines 47+; Col. 7, lines 1+).

Art Unit: 2841

Regarding Claim 5, Decker teaches a habit cessation aide wherein the aide is in the form of a wristwatch 10 (Col. 2, lines 37+).

Regarding Claim 6, Decker teaches a habit cessation aide further comprising a means 19 for functioning as a wristwatch and displaying (16) items including at least time, date, and elapsed time (Col. 1, lines 55+; Col. 2, lines 2+; Col. 3, lines 1+).

***Prior Art***

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Zettek U.S. Patent No. 4,630,935 discloses an electronic timepiece including a clock; a clock display for displaying time of day information provided by the clock, a chronograph for counting given elapsed natural time periods.
- Behar U.S. Patent No. 4,853,854 discloses an apparatus aid in withdrawing from a particular habit, such as smoking, comprising an a rectangular device comprising an LCD for display means, a "smoke" button switch to record each event, and an imbedded computer program charting each event versus elapsed time before a user goal.
- Borg U.S. Patent No. 5,813,026 discloses a portable electronic device comprising two programs stored within the memory, one program for operating the wristwatch device, and the second program comprising a behavioral modification process to assist the user to stop habits such as smoking.
- Becker U.S. Patent No. 5,861,797 discloses a reminder device comprising a microprocessor, a tactile alarm, an electric clock, a display, and a battery.
- Krstulovic U.S. Patent No. 6,305,839 B1 discloses a wristwatch to aid in smoking cessation comprising a face, a display area displaying elapsed time of the cessation, the amount of cigarettes smoked per day, as well as the natural time.

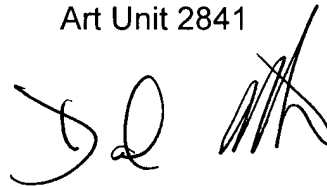
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael L. Lindinger whose telephone number is (703) 305-0618. The examiner can normally be reached on Monday-Thursday (7:30-6).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (703) 308-3121. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3431 for regular communications and (703) 305-3431 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Michael L. Lindinger  
Patent Examiner  
Art Unit 2841

A handwritten signature in black ink, appearing to be 'MLL', written over the printed name of Michael L. Lindinger.

MLL  
March 18, 2002

David Martin  
Primary Examiner

A handwritten signature in black ink, appearing to be 'DM', written over the printed name of David Martin.